Nova Scotia Freedom of Information and Protection of Privacy Review Office

Status Report:

The Impact of FOIPOP Fee Increases in Nova Scotia

Submitted To: The Freedom of Information & Protection of Privacy Act Review Committee
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Introduction

This status report highlights the worrisome changes in the Nova Scotia freedom of information and protection of privacy system since the imposition of new fees in April of 2002. Before the fee increase, Nova Scotia had an affordable system on par with other Canadian jurisdictions in terms of the volume of access requests made annually and the number of government decisions submitted for independent review. However, a sharp contraction of the system has occurred in the year since the new fees were imposed - the promptness of service, the use of the system, and the oversight of the system have declined while the cost has increased substantially.

Highest Fees in the Country - Effective April, 2002, fees to apply for access to information and to request a review of a decision made by a public body were increased. In Nova Scotia, the combined cost of applying for access to government records and a subsequent review now stands at $50. That is higher than any other province. In addition, the fees charged to process an application increased from $10 to $15 per half hour and the two free hours of search time were eliminated. This status report looks at the impact of these new fees from the perspective of one full year since their imposition.

Before the Increase (April 1st, 2001 to March 31st, 2002):

1. Access to Information Applications on Par with Other Provinces - In the twelve months before the fee increase, 1.3 applications for access to information were made for every one thousand Nova Scotians. This is comparable to the other provinces for which similar data is available.

2. Affordable FOIPOP system in Nova Scotia - At a total cost of $700,000, in 2001 the cost to each Nova Scotian was 74 cents to administer the freedom of information and protection of privacy system.

3. Typical Level of Satisfaction with Government Decisions - Before the imposition of a $25 review fee, 13% of access to information decisions made by public bodies in Nova Scotia were submitted to the Review Office for review. The average in the other provinces for which similar data is available was 9%.

4. Cost of Review Office Per Citizen Less than a Third that of Other Provinces - The cost incurred by the Nova Scotia Freedom of Information and Protection of Privacy Review Office to oversee the provincial access regime was 21 cents per Nova Scotian in 2001. The average cost per citizen in the other provinces for which similar data is available was 69 cents.

After the Increase (April 1st, 2002 to March 31st, 2003):

1. Less Access to Information - In the year since the fee increases, 27% fewer applications for access to information have been filed and 7% fewer applications have been granted in full by provincial public bodies.

2. Slower Service - In the year since the fee increases, 9% fewer applications for access were processed by provincial public bodies within the expected 30 day time period.

3. Less Oversight - Overall, the Review Office has received 40% fewer requests to review decisions made by public bodies since the $25 review fee was implemented.

4. More Fees Charged - The Provincial Government has collected $11,800 more in fees since the increase. This does not include fees collected by municipalities and local bodies such as health authorities, school boards and universities.

Conclusion:

The right of access to government information is a vital element of a modern democracy. Nova Scotia has historically been a leader in this area of government accountability and transparency as the first province in Canada to enact such legislation. Our Court of Appeal has recognized it as the "most open and accessible freedom of information law in the country".

Before the fee increase of April 2002, Nova Scotians made a similar number of applications for access to government records and requested a comparable number of reviews of government decisions as Canadians in other jurisdictions. The Nova Scotia Act was affordable. The cost of overseeing the regime in Nova Scotia was less than a third of that paid by Canadians in other areas of the country.

One year after the fee increases, there are 27% fewer applications for access, the number of applications processed within the legislated 30 day time period has decreased, the number of applications granted in full has decreased and the degree of oversight of the Act as measured by the number of review requests received by the Review Office has been nearly cut in half.

In short, the statistics support the conclusion that while the cost to the citizens of Nova Scotia to exercise their right to access government information has increased substantially, the service they receive under the Act has deteriorated and fewer Nova Scotians are using this important piece of legislation.

It is my conclusion that the increased fees have had a significant and negative impact on access to information in Nova Scotia.

"Democratic progress requires the ready availability of true and complete information. In this way people can objectively evaluate their government's policy. To act otherwise is to give way to despotic secrecy."

Pierre E. Trudeau

Table 1: Impact of the Fee Increase on Access to Information Applications to the Provincial Government in Nova Scotia

	Number of Provincial Government Access to Information Applications	Percent of Provincial Government Applications Granted in Full	Percent of Provincial Government Applications Completed Within 30 Days	Number of Requests for Review of Provincial Government Decisions	Fees Collected by the Provincial Government
Before*	1,155	34%	65%	121	$6,674.80
After*	843	27%	56%	76	$18,488.99
Change	-27%	-7%	-9%	-37%	+$11,814.19

Notes: The period 'Before' is April 1st, 2001 to March 31st, 2002. The period 'After' is April 1st, 2002 to March 31st, 2003. Fees were increased on April 4th, 2002.
Sources: The application data were provided by the Department of Justice and are the best figures available on the Provincial tracking system as of June 3rd, 2003. The Department of Justice advises that these figures may be updated in the future.

The total number of review requests received by the Review Office **decreased by 40%** in the year after the fee increase. During the year preceding the fee increase, 154 requests for review were received regarding decisions made by the provincial government, local public bodies, and municipalities combined. In the year since the fee increase, 92 review requests have been received. Since April, 2002, $1,975.00 has been collected in review request fees.

Table 2: Provincial Information and Privacy; Access & Oversight

Province	Total Number of Applications for Access to Information Received	Number of Reviews Opened	Commission / Review Office Budget	Population	Applications / 1000 Population	Percentage of Applications subject to Review	Budgeted for Information and Privacy Oversight per Citizen
Nova Scotia - 2001	**1,229**	**163**	**$200,000**	**944,800**	**1.3**	**13.3%**	**21.2¢**
Ontario - 2001	22,761	937	$7,250,000	12,068,300	1.9	4.1%	60.1¢
British Columbia - 01/02	n/a	923	$2,344,000	4,141,300	n/a	n/a	56.7¢
Quebec - 01/02	24,926	1,133	$4,054,000	7,455,200	3.3	4.5%	54.4¢
Alberta - 01/02	2,767	271	$3,287,000	3,113,600	0.9	9.8%	$1.06
Manitoba - 2001	1,209	213	n/a	1,150,800	1.1	17.6%	n/a
Average (excluding NS)					1.8	9%	69.3¢

Sources: Nova Scotia (before fee increase) Municipal and local public body applications: 2001 Review Office Annual Report (One year period, October 1st, 2000 - September 31st, 2001 = 157 applications) / Provincial applications: Department of Justice statistics, (One year period, January 1st, 2001 - December 31st, 2001 = 1072 applications) / Total review requests: 2001 Review Office Annual Report (One year period, October 1st, 2000 - September 31st, 2001) / Review Office 2001 budget: 2002 Review Office Financial Statements; **Ontario**, All figures drawn from the IPC 2001 Annual Report; **British Columbia**, Total review requests & Commission budget: 2001/2002 BC OIPC Annual Report; **Quebec**, Total quasi-judicial files opened & Commission budget: English summary of the 2001-2002 Annual Report / Total applications: 'Les Demandes D'accès à l'information Dans L'administration Publique du Québec en 2001-2002' by Paul André Comeau; **Alberta**,Total review requests & Commission budget: 2001-2002 Alberta OIPC Annual Report / Total applications: 2001/2002 Government FOIP Annual Report; **Manitoba**,Total FIPPA complaints: Manitoba Ombudsman 2001 Annual Report / Total applications: Manitoba Government 2001 FIPPA Annual Report; **Population**, (2002) Statistics Canada, CANSIM II, table 051-0001.

Notes: The jurisdictions included in this comparison were selected on the basis of the availability of comparable data for the selected period 2001 / 01-02. Every province in Canada currently has access to information legislation. **Newfoundland** appointed a 'citizens representative' to hear complaints related to freedom of information and other matters on February 1st, 2002. The 'citizens representative' is similar to ombudsmen in other provinces. Thus, there is no comparable data available for NFLD in 2001. **Prince Edward Island**'s first FOIPOP Act was proclaimed on November 1st, 2002, and the first Commissioner was appointed shortly thereafter. Thus, there is no comparable data available for PEI. **New Brunswick** has a Right to Information Act with oversight by an ombudsman, but similar data is not available. **Manitoba**'s Information and Privacy Commission is combined with the Office of the Ombudsman. The Office cannot provide a break-down of the proportion of the budget devoted to each activity. The total number of applications received by all categories of public bodies is not collected in **Saskatchewan**. However, the number of applications received only by the Government of Saskatchewan is tracked and recorded in the Government's 2001-2002 FOIPOP Annual Report. In the 01/02 period, the Government received 412 applications or 0.4 applications to the province/1000 population (in NS the same figure was 1.1 / 1000 pop.). 18 of those decisions were reviewed (Sask. provincial applications / Sask. provincial reviews = 4.4%, Nova Scotia provincial applications / NS provincial reviews =11.3 %). Although the Saskatchewan data cannot be compared to the figures from other provinces in the table above, it appears that Saskatchewan received fewer FOIPOP applications and fewer of those decisions were reviewed than in Nova Scotia in 2001. **Quebec**'s legislation is somewhat broader than other jurisdictions. Approximately 25% of the quasi-judicial reviews conducted are examinations of access and privacy disagreements involving private organizations. **British Columbia**'s legislation and is similar to Nova Scotia's. However, the total number of access applications received by all categories of public bodies is not collected in that province. The Corporate Privacy and Information Access Branch of the BC Government reports that 6,176 access applications were received by the provincial government in 2001 or 1.5 applications to the province/1000 pop (reviews divided by prov. apps = 14.9%). During the same year, 1072 applications were received by the NS government or 1.13 applications to the province/1000 pop (reviews divided by prov. apps = 15.2%). These figures are in line with the total application and review data collected in other provinces which show that Nova Scotia experienced a similar volume of FOIPOP activity.